

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARC WAYNE POOLE,

Defendant-Appellant.

UNPUBLISHED

August 26, 1997

No. 196913

Cass Circuit Court

LC No. 96-008633

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Defendant appeals by right his plea-bargained convictions of one count each of first- and third-degree criminal sexual conduct, in exchange for which a supplemental information charging him as an habitual offender, additional counts of first- and third-degree criminal sexual conduct, aggravated stalking, and felonious assault were dismissed. Defendant asserts on appeal that his sentences of fifteen to forty years for first-degree criminal sexual conduct and seven to fifteen years for third-degree criminal sexual conduct, are disproportionate to the offense and the offender, and that his trial counsel was ineffective in failing to object to the trial court's scoring of Offense Variable 7.

Given the merely advisory nature of the sentence guidelines, and the trial court's nearly unbridled discretion in scoring those guidelines, *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997), defense counsel's failure to object to the trial court's scoring of offense variable seven cannot be shown on this record to be prejudicial so as to establish a cognizable basis for appellate relief on a theory of ineffective assistance of counsel. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). In any event, it is not improper to score offense variables based on factors inherent in an offense. *People v Abbett*, 443 Mich 863; 503 NW2d 656 (1993).

Where, as here, defendant has benefited from a plea bargain which reduced the number of offenses and, as in this case, eliminated habitual offender charges, an appellate court is particularly reluctant to find an abuse of the trial court's sentencing discretion when the sentence is otherwise within the limits established by law. *People v Williams*, 223 Mich App ____; ____ NW2d ____ (Docket No. _____).

* Circuit judge, sitting on the Court of Appeals by assignment.

194996, released May 13, 1997). Inasmuch as defendant could have been sentenced to life or any term of years for the offense of first-degree criminal sexual conduct, it cannot be said on this record that the sentences imposed are disproportionate to the offenses or the offender. *People v Lemons*, 454 Mich 234; 562 NW2d 447 (1997).

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell